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No. _____

In The

Supreme Court of the United States

October Term, 1994

MYERS & ASSOCIATES, LTD., RICHARD J. MYERS, AND EDWARD D. GILHOOLY,

Petitioners,

v.

TRINITY INDUSTRIES, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a federal district court has specific jurisdiction over the Defendants in a lawsuit in which the Plaintiff accuses the Defendants of tortious acts which occurred outside the forum state and which are unrelated to a preexisting relationship between the Plaintiff and the Defendants.

2. Whether nonresident patent attorneys who represented a Texas client, at the direction of the Plaintiff's law firm, established minimum contacts with Texas sufficient to establish specific jurisdiction.

3. Whether the Fifth Circuit correctly concluded that the district court has specific jurisdiction over the Defendants.

LIST OF ALL PARTIES

The following are parties in this case:

Trinity Industries, Inc.

Myers & Associates, Ltd.

Richard J. Myers

Edward D. Gilhooly

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OPINIONS BELOW

This is an appeal from the final judgment dismissing this case by the United States District Court for the Northern District of Texas, Dallas Division. The opinion for the United States Court of Appeals for the Fifth Circuit is reported at 41 F.3d 229 (5th Cir. 1995). Copies of the district court's order and judgment and the Fifth Circuit's opinion are reprinted in the Appendix to this petition.

STATEMENT OF JURISDICTION

The date of the entry of the judgment sought to be reviewed is January 4, 1995. The motion for rehearing and suggestion for rehearing en banc was overruled February 7, 1995. This Court has jurisdiction to review the opinion and judgment of the court of appeals pursuant to 28 U.S.C.A. § 1254(1) (West 1993).

STATEMENT OF THE CASE

This is an appeal from an order of final judgment dismissing the case, which was rendered by the United States District Court, Northern District of Texas, Dallas Division. R1 at 143, 148. Trinity Industries, Inc. ("Trinity") filed suit in Texas state court against the Defendants, Myers & Associates, Ltd. and Richard J. Myers (collectively the "Myers Defendants"). R1 at 6. The Myers Defendants filed separate special appearances to contest the state court's jurisdiction over them and then removed

the case to federal court. The Myers Defendants subsequently filed a motion to dismiss. The district court found that Texas did not have general or specific jurisdiction over Myers or the Myers Defendants. R1 at 146-47. Trinity then timely appealed the judgment on the issue of specific jurisdiction only. R1 at 149. A panel of the Fifth Circuit Court of Appeals reversed the judgment of the district court and remanded the case for trial. The basis for reversal of the district court's judgment was that the Myers Defendants had sufficient contacts with Texas to justify exercising specific jurisdiction over the Myers Defendants in this lawsuit. 41 F.3d at 231-32.

ARGUMENT FOR GRANTING THE WRIT

This diversity suit is based on Trinity's claim for breach of fiduciary duty, civil conspiracy, negligence and punitive damages against the Myers Defendants. Trinity's causes of action against the Myers Defendants arise from legal services performed by the Myers Defendants on behalf of Johnstown American Corporation ("Johnstown"), a Pennsylvania corporation, which Trinity contends violated an alleged attorney-client relationship between Trinity and the Myers Defendants. A patent infringement lawsuit is currently pending in a Pennsylvania federal court between Johnstown and Trinity styled *Johnstown America Corp. v. Trinity Indus., Inc.* (Cause No. 92-587-J in the United States District Court, Western District of Pennsylvania, Johnstown Division).

The legal services performed by the Myers Defendants on behalf of Johnstown and at the direction of

Trinity's law firm, Baker & Botts, which services are the subject of this suit, were **not** performed in Texas. R1 at 10. Accordingly, the federal district court in Texas properly held that it lacks personal jurisdiction over the Myers Defendants and correctly dismissed the action in accordance with FED. R. CIV. P. 12(b)(2).

To find specific jurisdiction over Myers and the Myers Firm in this case it is necessary to conclude that the unilateral conduct of a Texas resident – Trinity – is sufficient to confer jurisdiction over the nonresident defendants. Such a finding, however, violates the United States Constitution's guarantee of due process. There is no connection in the case between the Myers Defendants, the State of Texas, and Trinity's causes of action. Further, adopting a " 'highly realistic' approach,"[1] the Myers Defendants have not purposefully directed their activities at residents of Texas sufficient to justify the call to a Texas court. Accordingly, the Texas long-arm statute does not reach the Myers Defendants. Therefore the district court properly dismissed the case, and the court of appeals' reversal of this order is constitutionally infirm.

FACTUAL BACKGROUND

Trinity is a Delaware corporation with its principal place of business and headquarters in Dallas, Texas. Trinity is primarily in the business of heavy metal products including the manufacturing and fabricating of railcars.

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[1] 41 F.3d at 230 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985)).

Myers & Associates, Ltd. ("Myers Firm"), is a law firm and an Illinois personal corporation with its principal place of business in Chicago, Illinois. R1 at 2. Richard J. Myers and Edward D. Gilhooly are attorneys and are citizens of Illinois. R1 at 2. Myers, President of Myers & Associates, Ltd., is licensed to practice law in the State of Illinois and is not licensed in any other state. R1 at 60-61.

The Myers Firm does not perform any services in Texas, it has no contacts with Texas, and it is not subject to service of process in Texas. R1 at 61. Similarly, Myers, an Illinois resident, has never resided in Texas, is not doing business in Texas, has no contacts with Texas, nor is he subject to service of process in Texas. R1 at 61. Neither the Myers Firm nor Myers was served with process in the Texas state court action; however, on July 9, 1993, Trinity's counsel provided the Myers Defendants with a "courtesy" copy of Trinity's Original Petition which was filed in Texas state court. On August 5, 1993, the Myers Defendants filed a special appearance in the Texas state court action and objected to the exercise of jurisdiction over them and removed the action to the federal district court.

Neither Myers nor his law firm have employees, servants or agents in the State of Texas. R1 at 61. The Myers Firm does not maintain a place of business, own real or personal property, maintain any bank accounts, telephone number or post office in Texas, nor does it pay any local or state taxes to any taxing authority in the State of Texas. *Id.* Neither Myers nor his law firm have ever operated, conducted, engaged in, or carried on a business or business venture in the State of Texas. *Id.* Neither Myers nor his law firm have committed a tort in

Texas; nor have they contracted by mail or otherwise with a Texas resident or recruited Texas residents, directly or indirectly, for employment inside or outside of the state. *Id.* Neither Myers nor his law firm are licensed to do business in the State of Texas, nor did they solicit business, engage in any course of conduct or derive revenue from goods sold or services rendered in the State of Texas. *Id.*

Myers was formerly the Chief Patent Counsel for Pullman, Inc. ("Pullman") in Chicago, Illinois. *Id.* In approximately 1980, Pullman Inc. was acquired by Wheelabrator Frye and experienced various organizational changes. *Id.* By 1984, Pullman's freight car division was named "Pullman Standard, Inc." and officed the freight car engineering personnel. *Id.* In addition to acquiring Pullman, Wheelabrator Frye interests also acquired various other Pullman locations, including the main corporate operations located in downtown Chicago, Illinois which officed the marketing, engineering and freight car testing facilities and the engineering offices located in Hammond, Indiana. *Id.* Engineering personnel were located in both Chicago and Hammond, Indiana where such engineering and testing operations took place. R1 at 61-62. Around this time, Wheelabrator management requested that Myers go into private practice and continue to handle, as outside counsel, the various transactions involving the operations of the former Pullman Inc., which included Pullman Standard, Inc. R1 at 62.

In 1984, Trinity purchased from Pullman Standard, Inc. engineering and marketing knowledge, and in some instances the personnel and physical locations located both in Chicago and in Hammond, Indiana. *Id.* Subsequently, Trinity moved these divisions to Michigan City,

Indiana. *Id.* In the sale, Myers was able to inform Trinity about the patents of Pullman Standard, Inc. as well as its trademarks. *Id.* Myers' role in the sale to Trinity from Pullman Standard, Inc. of the marketing, engineering and technical data was to give patent and trademark information to Trinity. *Id.* After the sale was complete, Richard Snyder, who left Pullman Standard, Inc. and went to work with Trinity, requested that Myers continue to help the newly acquired division. *Id.*

Any help subsequently provided to Trinity by Myers and the Myers Firm originated in Chicago, Illinois and Hammond, Indiana and was performed in these places. *Id.* Later, Trinity moved its operations to Michigan City, Indiana. *Id.*

In one instance, the Myers Firm and Myers were retained by Trinity to defend it in a patent infringement case related to a "well car," a type of railroad car. *Id.* This work lasted only eight months and ended in October 1990 or reasonably soon thereafter. *Id.* In that case, which was styled *Transit America, Inc. and Thrall Car Mfg. Co. v. Trinity Indus., Inc.* (pending in the United States District Court, Northern District of Texas, Fort Worth Division), it was alleged that Trinity infringed on a "well car" patent. *Id.*

At Trinity's request, Myers made approximately four trips to Texas between 1984 and 1991. *Id.* In 1993, again specifically at Trinity's request, Myers made a final trip to Texas. R1 at 62-63. Each of Myers' trips to Texas was made at the request of or for the convenience of Trinity. R1 at 63. Two of these trips were for the purpose of meeting with the officers of Trinity, another trip was to

inspect a railroad car and the other was to review files in the patent infringement action. *Id.* The trips to Texas between 1984 and 1991, as well as Myers' communications with Trinity during this time frame, were rare, sporadic and, since 1991, virtually nonexistent. *Id.* All of these trips and communications concerned work being performed in Illinois. *Id.* The 1993 trip was made at the specific request of Trinity and, in fact, turned out to be nothing more than a pretext to get Myers to Texas. *Id.* At the time the trip was requested, its purpose was very vague. *Id.* When Myers arrived at the meeting, however, Trinity's attorneys (from Baker & Botts) proceeded to question him about the facts that are the basis of the allegations in this lawsuit. *Id.* Accordingly, Myers promptly left the meeting and returned to Illinois. *Id.*

Since 1991, Myers has not received any new business from Trinity. *Id.* The only matters on which Myers worked for Trinity since 1991 have involved older pending business, including, patent office actions, trademark renewals and maintenance of tax fees on patents in the United States and foreign countries. *Id.* None of this work was performed in Texas. *Id.*[2] Virtually all of the work Myers performed on Trinity's behalf was done with and for the engineers at Chicago, Illinois or Hammond, Indiana, or later at the Michigan City, Indiana office. *Id.* The Myers Firm sent its fee statements to and received payment from Trinity's Dallas office. R2 at 19.

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[2] In addition to the infrequent trips to Dallas made at Trinity's request, the only other time Myers has been to Texas was in approximately 1951 when he drove through the Texas Panhandle on his way to California. R1 at 64.

Edward Gilhooly, an attorney licensed to practice law in Illinois, performed work as an independent contractor for the Myers Firm (from July 1990, until early 1993) for Trinity. R1 at 6, 7, 33, 34, 144; R2 at 19. Gilhooly performed limited legal work for Trinity: first, he completed four or five railcar patents during 1990-92 (R1 at 35; R2 at 139-40);[3] and second, for about eight months Gilhooly assisted Myers in defending Trinity in the patent-infringement case in federal district court in Fort Worth, Texas (R1 at 34-35; R2 at 55).[4]

Since entering private practice, Myers has been retained by numerous other companies which were formed as a result of the breakup of Pullman. R1 at 19. Johnstown American Corporation ("Johnstown"), a Pennsylvania corporation, solicited Myers' representation. R1 at 19. Myers performed patent-related services on Johnstown's behalf. R1 at 19. None of the work Myers performed for Johnstown, however, was performed in Texas. R1 at 19. In November 1991, Gilhooly began performing other patents and trademark work for Johnstown. R1 at 8, 35, 63. None of Gilhooly's work involved Trinity nor did it involve any contact with Texas. R1 at 35-36, 63.

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[3] Gilhooly's only contact with Texas concerning the patents was limited correspondence with a Trinity executive. R1 at 35.

[4] Gilhooly had three limited contacts with Texas during this case: first, at Trinity's request, he attended a three-hour meeting with Trinity executives in Dallas to report on the case (R1 at 35, 138; R2 at 61); second, Gilhooly exchanged some telephone calls and correspondence with Trinity representatives in Texas (R2 at 50, 58-63); and third, the Fort Worth federal district court admitted Gilhooly to appear *pro hac vice* (R2 at 54-55, 68-71).

In December 1992, Johnstown brought a patent-infringement case against Trinity in a federal district court in Pennsylvania. R1 at 8, 36, 64. The Johnstown suit involves a **coal car** – a type of railcar completely unrelated to the **well car** involved in the federal district court in Fort Worth. R1 at 36.[5] Trinity now alleges that Gilhooly assisted and counselled Johnstown in the preparation, filing and prosecution of the **coal car** case in Pennsylvania. R1 at 9. If any wrongful conduct occurred, it occurred in Illinois, Pennsylvania or both. R1 at 36, 146. None of Gilhooly's Texas contacts are related to Trinity's allegations against Gilhooly, and none of Myers' work for Johnstown involved the **coal car** at issue in the Pennsylvania litigation. R1 at 35, 64, 66-67.

Trinity then sued Myers, the Myers Firm, and Gilhooly in state district court in Dallas County, Texas, alleging breach of fiduciary duty, civil conspiracy and negligence. R1 at 6-14. Trinity alleges that the Myers Defendants, and Gilhooly failed to disclose the alleged assistance they gave to Johnstown in locating counsel and deciding whether and how to sue Trinity. *Id.* After the Myers Defendants and Gilhooly removed the case to federal court, the federal district court granted the defendants' motions to dismiss (R1 at 22, 38) and dismissed all claims for lack of personal jurisdiction. R1 at 143-48. The

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[5] The legal work Myers performed for Trinity involved patents and trademarks; however, it never involved or was related in any way to legal work relating to the Trinity "Aluminator" car, which has a sloped trough portion. R1 at 66-67. The "Aluminator" car is the car which allegedly infringes upon the Johnstown patent, according to the claims made by Johnstown in the Pennsylvania action. R1 at 64.

district court found that Texas did not have general or specific jurisdiction over the Myers Defendants or Gilhooly. R1 at 146-47.

Trinity appealed the district court's order, complaining only about the finding of lack of specific jurisdiction. Trinity's brief at 22-27. The Fifth Circuit reversed the district court's order and remanded the case for trial. 41 F.3d at 230.

ARGUMENT

I. The Law Applicable to Personal Jurisdiction Over a Nonresident Defendant.

A federal district court sitting in diversity may exercise personal jurisdiction over a nonresident defendant if (1) the long-arm statute of the forum state confers personal jurisdiction over that defendant; and (2) the exercise of such jurisdiction by the forum state is consistent with due process under the United States Constitution. *E.g., Ruston Gas Turbines, Inc. v. Donaldson Co.*, 9 F.3d 415, 418 (5th Cir. 1993). The broad language of the Texas long-arm statute[6] permits it to reach as far as the federal constitutional requirements of due process will allow, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413 (1984); *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990); therefore, these two inquiries collapse into a single due process analysis. *Ruston Gas Turbines*, 9 F.3d at 418; *Polythane Sys., Inc. v. Marina Ventures Int'l, Ltd.*, 993

[6] Tex. Civ. Prac. & Rem. Code Ann. §§ 17.041-045 (Vernon 1986).

F.2d 1201, 1205 (5th Cir. 1993). The due process clause of the Fourteenth Amendment, as interpreted by this Court, permits the exercise of personal jurisdiction over a nonresident defendant when (1) the nonresident defendant has purposefully established "minimum contacts" with the forum state; and (2) the exercise of jurisdiction over that defendant does not offend "traditional notions of fair play and substantial justice." *Asahi Metal Indus. v. Superior Court*, 480 U.S. 102, 108-09 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985) (citing *International Shoe Corp. v. Washington*, 326 U.S. 310, 316 (1945)).

II. "Minimum Contacts" Under the Due Process Analysis.

The basis for personal jurisdiction over the nonresident defendants in this case is specific jurisdiction. *Polythane Systems*, 993 F.2d at 1205. When the lawsuit is related to or arises out of the defendant's contacts with the forum state, the minimum contacts inquiry focuses on the relationship among the defendant, the forum, and the litigation. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977); *Stuart v. Spademan*, 772 F.2d 1185, 1190 (5th Cir. 1985). The minimum contacts requirement is satisfied in this context, and *specific* jurisdiction is proper, so long as "the defendant has purposefully directed his activities at residents of the forum . . . ***and the litigation results from alleged injuries that arise out of or relate to those activities.***" *Burger King*, 471 U.S. at 472 (emphasis added); *Coats v. Penrod Drilling Corp.*, 5 F.3d 877, 884 (5th Cir. 1993); *National Indus. Sand Ass'n v. Gibson*, No. D-3855, 1995 WL 346091, at *2 (Tex. Apr. 27, 1995).

Under the "minimum contacts" prong, the inquiry is whether there has been some act whereby the non-resident defendant has "purposefully availed" itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws and creating a substantial connection with the forum state. *Ruston Gas Turbines*, 9 F.3d at 419; *Asahi*, 480 U.S. at 109; *Burger King*, 471 U.S. at 474-75. The "purposeful availment" requirement ensures that a non-resident defendant will not be haled into a jurisdiction based solely on "random," "fortuitous" or "attenuated" contacts or upon the "unilateral activity of another party or third person." *Burger King*, 471 U.S. at 475. The defendant's connection with the forum state must be such that it "should reasonably anticipate being haled into court in the forum state." *Ruston Gas Turbines*, 9 F.3d at 419; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980); *Penrod Drilling*, 5 F.3d at 884; *National Indus. Sand Ass'n v. Gibson*, No. D-3855, 1995 WL 346091, at *3 (Tex. Apr. 27, 1995). Specifically in the corporate context, this Court held that when a corporation conducts activities within the forum state, it must have "clear notice" that it is subject to suit there, and be able to act in order to "alleviate the risk of burdensome litigation . . . or, if the risks are too great, [sever] its connection with the State." *World-Wide Volkswagen*, 444 U.S. at 297.

III. "Minimum Contacts" In Cases Involving Claims Arising From the Attorney-Client Relationship.

The federal courts have repeatedly addressed the unique analysis that is applied when determining if a

defendant-attorney, who has been sued for legal malpractice or such related claims, has minimum contacts with the forum state. *See, e.g., Sher v. Johnson,* 911 F.2d 1357, 1366 (9th Cir. 1990); *Federal Deposit Ins. Corp. v. Malmo,* 939 F.2d 535, 537 (8th Cir. 1991); *Austad Co. v. Pennie & Edmonds,* 823 F.2d 223, 226 (8th Cir. 1987). These cases, along with many others, apply the well-settled proposition of jurisdiction law that the "mere existence of a contract with a party in the forum state does not constitute sufficient minimum contacts for jurisdiction." *Sher v. Johnson,* 911 F.2d at 1362 (citing *Burger King,* 471 U.S. at 478). In the context of lawsuits in which plaintiffs assert legal malpractice and related claims, the federal courts have consistently held that a defendant-attorney does not have sufficient contacts with a forum state if the extent of the attorney's contacts are:

- the existence of an attorney-client relationship with a resident of the forum state;
- telephone calls or correspondence to the client in the forum state; or
- payment from the client, when the payment originates in the forum state.

See Sher v. Johnson, 911 F.2d at 1362; *Federal Deposit Ins. Corp. v. Malmo,* 939 F.2d at 537; *Austad Co. v. Pennie & Edmonds,* 823 F.2d at 226. As the Ninth Circuit explained:

> Out-of-state legal representation does not establish purposeful availment of the privilege of conducting activities in the forum state, where the law firm is solicited in its home state and takes no affirmative action to promote business within the forum state.

Sher v. Johnson, 911 F.2d at 1363.

Thus, when determining if a defendant-attorney has sufficient contacts with a forum state in the context of a legal malpractice lawsuit, the controlling inquiry is whether the attorney has taken affirmative action to promote business in the forum state. Calls to and from the forum state and receiving payment drawn from a bank located in the forum state are irrelevant. In short, because out-of-state representation does not create minimum contacts, neither do the normal incidences of representation. *Sher v. Johnson*, 911 F.2d at 1362.

Using the analysis of the Eighth and Ninth Circuits (rather than the analysis adopted by the Fifth Circuit in this case), a forum state does not have specific jurisdiction over a defendant-attorney when the attorney has not affirmatively and actively sought business in the forum state. *Austad Co. v. Pennie & Edmonds*, 823 F.2d at 226. Consequently, an attorney **does not have minimum contacts with the forum state** when the attorney:

- does not have an office in the forum state;
- is not licensed to practice in the forum state;
- makes only intermittent trips to the forum state pursuant to the representation and
- does not advertise or solicit business in the forum state.

Sher v. Johnson, 911 F.2d at 1362; *Austad Co. v. Pennie & Edmonds*, 823 F.2d at 226. Moreover, minimum contacts do not exist when the attorney does not initiate the representation, does not establish the representation in the forum state and does not perform the legal services in the forum state. *Sher v. Johnson*, 911 F.2d at 1362; *Austad Co. v. Pennie*

& Edmonds, 823 F.2d at 226. Under these circumstances, these circuits hold that the defendant-attorney has not purposefully directed his or her activities to forum state residents. *Id.*

The Fifth Circuit's opinion stands in remarkable contrast to other specific jurisdiction decisions from the other circuit courts of appeals. Contrary to *Sher*, *Austad* and *Malmo*, the Fifth Circuit determined that the incidences of representation are sufficient to create minimum contacts. 41 F.3d at 231. While, the Fifth Circuit's opinion in this case is inconsistent with that of other circuits, more importantly, the Fifth Circuit's opinion will not withstand constitutional scrutiny.

IV. The Fifth Circuit Erred in Concluding That the District Court Has Specific Jurisdiction Over the Myers Defendants.

A. The Myers Defendants have not purposefully availed themselves of the benefits and protections of the laws of the State of Texas.

To satisfy the requirements of specific jurisdiction, Trinity must establish that this action arises out of the Myers Defendants' purposeful activity directed at residents of the State of Texas. *See Burger King*, 471 U.S. at 472. In this case, Trinity did not meet this burden. None of the facts show that Trinity's claims arise out of the Myers Defendants' purposeful activity directed at residents of Texas.

1. The incidences of representation are not purposeful availment.

The Fifth Circuit recited that the long-term attorney client relationship between Trinity and the Myers Defendants, the correspondence between the two, the sporadic travel to Texas by the Myers Defendants and payment to the Myers Defendants forthcoming from Texas as establishing specific jurisdiction. 41 F.3d at 231. Other circuits have held that none of these factors satisfy a plaintiff's burden to establish that the forum state has specific jurisdiction over a defendant-attorney. *Sher v. Johnson*, 911 F.2d at 1362; *Austad Co. v. Pennie & Edmonds*, 823 F.2d at 226. None of these factors indicate purposeful availment. The mere establishment of an attorney-client relationship with a Texas client (Trinity) is insufficient to create jurisdiction. 41 F.3d at 230 (citing *Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773, 778 (5th Cir. 1986), *cert. denied*, 481 U.S. 1015 (1987) (merely contracting with a resident of the forum state is insufficient)). This rule is applicable even where the attorney visits the client's forum during the representation. *See Austad Co. v. Pennie & Edmonds*, 823 F.2d at 226; *Biederman v. Schnader, Harrison, Siegal & Lewis*, 765 F. Supp. 1057, 1061 (D. Kan. 1991); *Westmoreland Cole Co. v. Kaufman*, 184 W.Va. 195, 399 S.E.2d 906, 908 (W.Va. 1990); *Barnes v. Gerhard*, 834 S.W.2d 902, 903 (Mo. Ct. App. 1992); *Weiss v. Greenburg, Traurig, Askew, Hoffman, Lipoff, Quental & Wolff, P.A.*, 85 A.D.2d 861, 446 N.Y.S.2d 447, 449 (N.Y. App. Div. 1981). The exchange of letter and telephone calls in furtherance of the attorney-client relationship is insufficient to establish specific jurisdiction. *Stuart v. Spademan*, 772 F.2d at 1193; *Peterson v. Kennedy*, 771 F.2d 1244, 1262 (9th Cir. 1985). And, the payment of legal

services by Trinity will not establish specific jurisdiction. *Austad Co. v. Pennie & Edmonds*, 823 F.2d at 226; *Biederman v. Schnader, Harrison, Siegal & Lewis*, 765 F. Supp. at 1061; *Myers v. Emery*, 697 S.W.2d 26, 32 (Tex. App. – Dallas 1985, no writ).

2. Infrequent trips to the forum state is not purposeful availment.

Any contact that may have resulted from Myers' infrequent travels through Texas at Trinity's request are random, fortuitous and attenuated. *See World-Wide Volkswagen*, 444 U.S. at 298. All of Myers' few trips to Texas and communications with residents of Texas were at the request and for the convenience and benefit of Trinity. All of the Myers Defendants' work performed for Trinity involved the railroad engineering office located in Illinois. The Myers Defendants did not solicit Trinity to perform work on its behalf in Texas. Rather, Trinity sought the Myers Firm for services it required in Illinois. It was only through the unilateral requirements and acts of Trinity that the Myers Defendants had any contact of any kind with the State of Texas.

3. Admission *pro hac vice* is not purposeful availment.

The mere fact that the Myers firm was admitted *pro hac vice* in the Northern District of Texas to represent Trinity in one patent litigation matter does not create specific jurisdiction. This principle is most keenly illustrated in *Hill v. Sidley & Austin*, 762 F. Supp. 931, 935 (S.D.

Fla. 1991). In that case, the plaintiff sued a Chicago-based law firm in Florida state court, contending that the contract between the parties restricted the plaintiff's ability to practice law in contravention to the Model Code of Professional Responsibility. The defendant-firm removed the case to federal court and then moved to dismiss the case on lack of personal jurisdiction. The defendant-firm explained that it did not have an office in Florida and did not solicit business in that state. As further proof of its attenuated connections with Florida, the defendant-firm stated that on the few occasions when it renders legal services in Florida, its attorneys are required to be admitted *pro hac vice*. The plaintiff used this admission as evidence of minimum contacts to support imposition of specific jurisdiction over the defendant-firm.

The district court rejected the plaintiff's argument. *Hill v. Sidley & Austin*, 762 F. Supp. at 934. The court held that sending payment and correspondence to Florida does not create minimum contacts. *Id.* The court also noted that the defendant-firm did not have an office in Florida and did not solicit business in that state. *Id.* at 935. Most persuasive, however, is the court's consideration of the defendant-firm's sporadic rendering of legal services in Florida, practicing *pro hac vice*. The court reasoned that because this in-state representation occurred infrequently and such representation was unrelated to the plaintiff's claims, being admitted to the Florida bar *pro hac vice* did not create contacts with that state justifying application of personal jurisdiction over the defendant-firm. *Id.* at 935 & n.3 (citing *Diamond Mortgage Corp. of Ill. v. Sugar*, 913 F.2d 1233, 1244-47 (7th Cir. 1990) (sporadic

legal representation in the forum state establishes minimum contacts only when the services performed are related to the malpractice claims asserted)).

This district court was true to the Court's directive in *Burger King* to apply a " 'highly realistic' approach"[7] to specific jurisdiction analysis. This approach dictates that the mere fact that a defendant-firm has been admitted *pro hac vice* in the forum state does not create specific jurisdiction over that firm. Admission *pro hac vice* is not minimum contacts, especially when such representation is infrequent and unrelated to the plaintiff's complaints.

4. When performance of legal services occurs outside the forum state, this performance is not purposeful availment.

Trinity's complaint clearly establishes that the activity at issue took place outside Texas. At issue in this case is whether the Myers Defendants allegedly disclosed confidential information to Johnstown which they allegedly acquired while representing Trinity. It is alleged that the Myers Defendants took action in Texas as part of their representation of Trinity, but Trinity is not suing the Myers Defendants as a result of that representation. Instead, Trinity is suing for alleged conduct which occurred in Illinois and Pennsylvania. This conduct, and even the Myers Defendants' representation of Johnstown, did not take place until after their contacts with the State of Texas had occurred – no matter how random and

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[7] 41 F.3d at 230 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985)).

sporadic. In short, this case is not based upon acts taken by the Myers Defendants in Texas.

5. An out-of-state attorney-client relationship is not purposeful availment.

Simply because Trinity is a forum resident does not establish that the Myers Defendants purposefully availed themselves of the benefits and protections of the laws of Texas. *Holt Oil & Gas*, 801 F.2d at 778; *Patterson v. Dietze, Inc.*, 764 F.2d 1145, 1147 (5th Cir. 1985). Certainly Trinity's mere presence in Texas does not establish that Trinity's claims arise out of the Myers Defendants' purposeful contacts with Texas. *See also Colwell Realty Invs., Inc. v. Triple T Inns of Ariz., Inc.*, 785 F.2d 1330, 1334 (5th Cir. 1986).

B. The alleged injury to Trinity occurred, if at all, outside the State of Texas.

The conduct of which Trinity complains occurred in Illinois or Pennsylvania on behalf of Johnstown, but it did not occur in Texas. The Myers Defendants could not reasonably anticipate being haled into Texas for work performed in Illinois or Pennsylvania.

Trinity also failed to establish any connection between the Myers Defendants' legal work for Trinity and their services performed on behalf of Johnstown. Trinity complains of the Myers Defendants' alleged betrayal of Trinity by helping Johnstown locate counsel and file the coal car case in federal district court in Pennsylvania. R1 at 10. The Myers Defendants were hired

by Johnstown to perform patent-related work for the Pennsylvania company. The Myers Defendants performed no services within Texas in connection with their work for Johnstown, which is the basis of this action. In fact, the *only* connection between this *current* action and Texas is that Trinity is a Delaware corporation with its principal office in Texas. This connection is tenable, at best, and is clearly insufficient to create specific jurisdiction over the Myers Defendants.

The Myers Defendants' conduct has nothing to do with the work that the Myers Defendants performed for Trinity. Trinity simply argues that the Myers Defendants were "reprehensible" by assisting a Trinity competitor. *Id.* Other than generally complaining about the nature of the Myers Defendants' alleged conduct, Trinity failed to even allege how it was harmed or damaged by the conduct. *See* R1 at 6-14.

This Court explicitly rejected the notion that mere foreseeability of injury in the forum state is sufficient to confer jurisdiction. *See Asahi*, 480 U.S. at 112; *Burger King*, 471 U.S. at 474; *World-Wide Volkswagen*, 444 U.S. at 295. In cases alleging nonforum conduct causing injury in the forum, jurisdiction attaches only if the defendant's intentional actions were aimed at the forum and the defendant knew that the brunt of the injury would be felt in the forum. *Calder v. Jones*, 465 U.S. 783, 788-90 (1984) (forum was the focal point of the defamatory story and the injury to the plaintiff's reputation); *National Indus. Sand Ass'n v. Gibson*, No. D-3855, 1995 WL 346091, at *4 (Tex. Apr. 27, 1995).

Trinity has not alleged or offered any evidence of any injury or damages occurring in Texas. Moreover, Trinity has not alleged that it felt the brunt of the injury in Texas or that the Myers Defendants knew that Trinity would feel the brunt of the alleged injury in Texas. Instead, Trinity merely makes vague allegations of "disloyal" and "reprehensible" conduct by the Myers Defendants without specifying the place of Trinity's injury. *See Southmark Corp. v. Life Investors, Inc.*, 851 F.2d 763, 772-73 (5th Cir. 1988) (no evidence that the defendant aimed its tortious conduct at Texas or that the defendant knew that the plaintiff would feel the brunt of the injury in Texas). Here, the situs of Trinity's damages, if any, is Pennsylvania, where the coal car litigation is pending. Trinity has simply failed to establish any economic consequences of the Myers Defendants' purported conduct in Texas, and even if it had, that contact would nevertheless remain insufficient to confer specific jurisdiction.

The Myers Defendants were sued in Texas for no other reason than that Trinity is located in Dallas. The Myers Defendants carried on no activity whatsoever in Texas that is the basis for Trinity's tortious state law claims against them. The Myers Defendants availed themselves of none of the privileges and benefits of Texas law. In short, Trinity seeks to base jurisdiction on the Myers Defendants' representation of Trinity in a case that is unrelated to the basis of its purported and unspecified injury.

Simply because (i) Trinity has its principal office in Texas, (ii) Trinity requested the Myers Defendants to travel to Texas from Illinois, and (iii) Trinity was sued in

Texas should not have led the Fifth Circuit to the conclusion that the Myers Defendants "purposefully availed" themselves of the laws of Texas. The unilateral acts of Trinity do not satisfy the requirement of purposeful contact by the Myers Defendants with the forum state. *Helicopteros*, 466 U.S. at 415. Thus, Trinity's desire to seek legal advice from the Myers Defendants cannot be used to punish the Myers Defendants by conferring jurisdiction over them in Texas – a state in which Myers and his law firm have never purposefully directed their activities.

IV. The Exercise of Personal Jurisdiction Over the Myers Defendants Would "Offend Traditional Notions of Fair Play and Substantial Justice."

The factors to be considered by the Court in evaluating "fair play and substantial justice" include: (1) the burden on the defendant; (2) the interest of the forum state in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversy; and (5) the shared interest of the several states in furthering fundamental substantive social policies. *Burger King*, 471 U.S. at 477; *Ruston Gas Turbines*, 9 F.3d at 421. The Fifth Circuit concluded that Texas' "substantial interest in protecting its residents from an [allegedly] abusive attorney-client relationship" outweighs the other factors enumerated. 41 F.3d at 232.

It is not reasonable for a Texas court to exercise personal jurisdiction over the Myers Defendants as they have not directed any activity toward Texas and the

burden of defending this case in Texas would be significant. Likewise, it offends traditional notions of fairness to confer jurisdiction over a non-resident simply because Trinity, a Texas resident, sought the Myers Defendants' services for activities outside Texas. As stated in Myers' affidavit, it would be inconvenient and burdensome for him or any other representative of the Myers Firm to defend this lawsuit in Texas. Because the Myers Defendants do not have representatives or family in Texas, they would be required to incur significant travel and lodging expense to attend depositions, hearings, meetings and the trial of the case. R1 at 64. Further, Myers, as President of the Myers Firm, would be required to be absent from work, thus causing a significant hardship to his business. *Id.* It is both unfair and unreasonable to require Myers or representatives of the Myers Firm to travel to Texas to defend this action when neither has purposely availed itself of the privilege of conducting activities in Texas. *Id.* Contrary to the Fifth Circuit's conclusion, Trinity purposefully directed its activities towards the State of Illinois and, in fact, is located in Illinois; therefore, the Texas courts have no special interest in hearing this case to correct an alleged wrong directed at a Texas resident.

Considering that the entire transaction involving the Myers Defendants occurred outside Texas and that the Myers Defendants have absolutely no contacts with Texas, it is constitutionally wrong to require them to defend themselves in Texas. To exercise jurisdiction over the Myers Defendants would contradict the constitutional protection provided in the due process clause and would

offend "traditional notions of fair play and substantial justice."

CONCLUSION

Myers & Associates, Ltd. and Richard J. Myers request that this Court grant a writ of certiorari to the United States Court of Appeals for the Fifth Circuit, that this Court reverse the judgment of the Fifth Circuit and affirm the judgment of the district court.

Respectfully submitted,

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Counsel for Petitioners,
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TRINITY INDUSTRIES, INC.,
Plaintiff-Appellant,

v.

MYERS & ASSOCIATES, LTD., et al., Defendants-Appellees.

No. 93-9169.

United States Court of Appeals,
Fifth Circuit.

January 4, 1995.

Rehearing Denied Feb. 7, 1995.

Texas corporation brought suit against its former patent attorneys alleging that attorneys counseled competitor in bringing adverse litigation. Attorney's motion to dismiss for lack of personal jurisdiction was granted by the United States District Court of the Northern District of Texas, Robert B. Maloney, J. Appeal was taken. The Court of Appeals, Politz, Chief Judge, held that attorneys subjected themselves to personal jurisdiction by voluntarily assuming and continuing legal representation of Texas client.

Reversed and remanded.

Larry D. Carlson, Bryant S. McFall, Baker & Botts, Dallas, TX, for appellant.

W. Wendell Hall, Fulbright & Jaworski, San Antonio, TX, for appellees.

Scott Patrick Stolley, Thomas A. Culpepper, Thompson, Coe, Cousins & Irons, Dallas, TX, for Gilhooly.

Appeal from the United States District Court for the Northern District of Texas.

Before POLITZ, Chief Judge,

GOLDBERG and DUHÉ, Circuit Judges.

POLITZ, Chief Judge:

Trinity Industries, Inc. appeals the dismissal for lack of personal jurisdiction of its suit against its former attorneys. Concluding that the requisite jurisdiction exists, we reverse and remand.

Background

In ruling on a motion to dismiss without an evidentiary hearing, as was done here, the district court must accept as true the uncontroverted allegations in the complaint and resolve in favor of the complainant any factual conflicts posed by the affidavits.[1] The following accords with that rubric for purposes of today's disposition.

In 1984 Trinity, a Delaware corporation with its principal place of business in Dallas, Texas, purchased certain assets of Pullman Standard, Inc., and engaged the latter's Illinois patent attorneys, Myers & Associates, Ltd., for representation in patent and trademark matters. From 1984 to early 1993 the Myers firm, through its name partner Richard J. Myers, and Edward D. Gilhooly, a contract attorney, represented Trinity on an ongoing basis, including defense of a patent infringement suit in

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[1] *Wilson v. Belin*, 20 F.3d 644 (5th Cir.), *cert. denied*, ___ U.S. ___, 115 S.Ct. 322, 130 L.Ed.2d 282 (1994).

the Northern District of Texas. Myers identified 40 matters that his firm was handling for Trinity as of February 1993.

In December 1992, Johnstown American Corporation, a Trinity competitor in Pennsylvania, filed a patent infringement action against Trinity in district court in the Western District of Pennsylvania. According to Trinity, Myers and Gilhooly counseled Johnstown in the preparation and prosecution of that litigation.

Trinity filed the instant action in Texas state court against Myers, Gilhooly, and the Myers firm, alleging breach of fiduciary duty, civil conspiracy, and negligence. The defendants removed the action to federal court and sought dismissal for lack of personal jurisdiction. The district court granted their motion and Trinity timely appealed.

Analysis

A federal court sitting in diversity may exercise jurisdiction over a nonresident defendant to the same extent as a forum state court. Because the Texas long-arm statute extends to the fullest constitutional limits, defendants' amenability to suit in Texas turns on an analysis of due process parameters.[2]

Due process permits the assertion of specific jurisdiction over an out-of-state defendant if he has "purposefully directed his activities at residents of the forum state . . . and the litigation results from alleged injuries

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[2] *Wilson.*

that arise out of or relate to those activities,"[3] unless the exercise of jurisdiction would offend traditional notions of fair play and substantial justice. When the district court rules on a motion to dismiss without an evidentiary hearing the plaintiff need only present a *prima facie* case of personal jurisdiction.[4] We conclude that Trinity has done so.

The *Burger King* Court directed us to take a "highly realistic"[5] approach to deciding whether a defendant has established the requisite minimum contacts. The bare existence of an attorney-client relationship is not sufficient.[6] Here, however, there is more. The record reflects a factual scenario sufficient to support an inference that the defendants purposefully availed themselves of the privilege of doing business in Texas.[7] Myers considered

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[3] *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182, 85 L.Ed.2d 528 (1985) (internal quotations and citations omitted).

[4] *Wilson.*

[5] 471 U.S. at 479, 105 S.Ct. at 2185.

[6] Id.; *Holt Oil & Gas Corp. v. Harvey*, 801 F.2d 773 (5th Cir.1986), *cert. denied*, 481 U.S. 1015. 107 S.Ct. 1892, 95 L.Ed.2d 499 (1987).

[7] *See Burger King*, 471 U.S. at 473, 105 S.Ct. at 2182-83 (with respect to interstate contractual obligations, personal jurisdiction exists over parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state"); *Thompson v. Chrysler Motors Corp.*, 755 F.2d 1162, 1170 (5th Cir.1985) ("It is not unfair to require a nonresident to defend itself in the courts of the forum state if the nonresident engaged in activities that will support an inference that the nonresident defendant purposefully availed [itself] of the benefits of conducting business in the forum.") (internal quotation and citation omitted).

Trinity a major client. His firm represented the Texas-based company over the course of eight years, regularly handling patent matters involving the former Pullman-Standard assets. The legal representation required regular mail and telephonic communications with Texas and, on occasion, physical presence for meetings in Dallas. Over a three-year period Myers appeared *pro hac vice* for Trinity in the Northern District of Texas. Further, the Myers firm billed Trinity in Texas and payment was forthcoming from Texas.

These contacts amount to a substantial connection with Texas and cannot accurately be characterized as random, fortuitous, or incidental.[8] Rather, they indicate that the defendants deliberately availed themselves of the benefits of an ongoing relationship with a Texas client and reasonably should have anticipated the possibility of being haled into court in Texas for claims arising out of or related to that relationship.[9] As the Court observed in

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[8] *Cf. Holt* (specific jurisdiction was lacking where performance of the drilling contract from which the litigation arose was centered elsewhere); *Austad Co. v. Pennie & Edmonds*, 823 F.2d 223 (8th Cir.1987) (personal jurisdiction over the defendant attorneys did not lie where a single lawsuit gave rise to the litigation, the plaintiff was one of several clients brought in to share the costs, and the principal connection to the forum was plaintiff's residence).

[9] *Cf. Bullion v. Gillespie*, 895 F.2d 213 (5th Cir. 1990) (specific jurisdiction over nonresident doctor exists where forum state patient had an ongoing relationship with the doctor and treatment in part occurred in the forum state); *T.M. Hylwa, M.D., Inc. v. Palka*, 823 F.2d 310 (9th Cir.1987) (provision of ongoing accounting services to forum resident was sufficient to support specific jurisdiction over out-of-state accountant).

Burger King, an individual who purposefully directs his activities to forum state residents and derives benefits therefrom should be answerable in the forum for the consequences of his activities; "the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed."[10] That Trinity initially solicited the services of the Myers firm does not change this result. although personal jurisdiction does not lie when the defendant cannot control vulnerability to suit, the defendants at bar voluntarily assumed and continued the obligation of representing the Texas client.[11]

Gilhooly insists that his contacts were less substantial than Myers'. We find the differences to be merely quantitative, not qualitative. Gilhooly represented Trinity for a shorter period of time and on fewer matters than did Myers but, in consultation over a two-year period with a Trinity executive in Texas, he completed several patent applications. He also appeared in the Northern District of Texas litigation for eight months. Like Myers, Gilhooly had an ongoing relationship with Trinity. The quantitative differences are not decisive.[12] Nor is the fact that Gilhooly worked for the Myers firm; he nevertheless availed himself, as an attorney, of the opportunity to represent a Texas resident.

The second inquiry is whether the litigation resulted from injuries arising out of or related to the defendants'

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[10] 471 U.S. at 474, 105 S.Ct. at 2183.

[11] *See Hylwa.*

[12] *Thompson.*

forum contacts. The district court answered this in the negative, considering the pertinent contacts to be those with Johnstown occurring in Pennsylvania or Illinois. In this the district court erred. The essence of Trinity's complaint is that its own lawyers counseled its competitor in bringing adverse litigation. There would be no injury or basis for a claim but for the fact that Myers and Gilhooly represented Trinity in Texas before and during their engagement by Johnstown. Assuming minimum contacts exist, as they do herein, a lawyer accused of violating his or her professional obligations to a client is answerable not only where the alleged breach occurred but also where the professional obligations attached.[13] In this instance, that attaching was within the state of Texas.

Finally, we turn to the reasonableness inquiry. Texas has a substantial interest in protecting its residents from an abusive breach of the attorney-client relationship by the attorneys. The defendants have not demonstrated that other considerations outweigh this interest. We therefore conclude that they are amendable to suit in Texas and that no due process violation is occasioned thereby.

REVERSED and REMANDED for further proceedings consistent herewith.

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[13] *See Hylwa; Waterval v. District court in and for El Paso County*, 620 P.2d 5 (Colo.1980), *cert. denied*, 452 U.S. 960, 101 S.Ct. 3108, 69 L.Ed.2d 971 (1981).

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9169

TRINITY INDUSTRIES, INC.,

Plaintiff-Appellant,

versus

MYERS & ASSOCIATES, LTD., ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING

(February 7, 1995)

Before POLITZ, Chief Judge, GOLDGERG, and DUHÉ, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above case is denied.

ENTERED FOR THE COURT:

/s/ Henry A. Politz
CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRINITY INDUSTRIES, INC.,

Plaintiff

No. 3:93-CV-1587-T

v.

MYERS & ASSOCIATES, LTD.,
RICHARD J. MYERS, and
EDWARD D. GILHOOLY,

Defendants.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

(Filed Nov. 30, 1993)

Before the Court are Defendants' Motions to Dismiss for Lack of Personal Jurisdiction. Also before the Court is Defendant Gilhooly's Alternative Motion to Transfer Venue. The motions are opposed. After consideration of the motions, response, and replies, the Court is of the opinion that the Motions to Dismiss should be granted and the Motion to Transfer Venue should be declared moot.

This suit concerns Defendants' alleged acts of breach of fiduciary duty, civil conspiracy, and negligence. Trinity alleges that Defendants actively aided and assisted a competitor, Johnstown America Corporation, to prepare, file, and prosecute a lawsuit against Trinity while Defendants were representing Trinity. Specifically, Trinity

claims that Defendants committed the alleged acts by (1) attending a strategy meeting with Johnstown to discuss its patent infringement claim against Trinity and to determine whether Johnstown should file a lawsuit against Trinity; (2) speaking with Johnstown's officers concerning its selection of trial counsel in its lawsuit against Trinity; (3) interviewing candidates for the position of Johnstown's trial counsel in its lawsuit against Trinity; and (4) providing counsel to Johnstown concerning its lawsuit against Trinity since the filing of that lawsuit.

Trinity is a Delaware corporation with its principal place of business in Dallas, Texas. Defendant Myers & Associates, Ltd. is an Illinois personal corporation with its principal place of business in Chicago, Illinois. Defendant Myers and defendant Gilhooly are citizens of Illinois. Gilhooly maintains his own legal practice in Illinois and is not a member or employee of Myers & Associates. However, he does perform independent contract work for the firm. Johnstown is a Pennsylvania Corporation.

Defendants have filed motions to dismiss pursuant to FED. R. CIV. P. 12(b)(2) for lack of personal jurisdiction. Trinity contests the motions and asserts that jurisdiction over Defendants is proper.

The Texas long-arm statute authorizes personal jurisdiction over non-residents when their actions constitute "doing business" in the state. TEX. CIV. PRAC. & REM. CODE ANN. §§ 17.042-043. A court's jurisdictional power under the long-arm statute may be extended to the limits of the Due Process Clause of the United States Constitution. *Schlobohm v. Schapiro*, 784 S.W.2d 355, 357 (Tex. 1990). Due process requires that a two prong test must be met before

assertion of jurisdiction is proper. *International Shoe v. Washington*, 326 U.S. 310, 319 (1945). First, the plaintiff must show that the defendant has minimum contacts with the forum state. *Id.* Second, the plaintiff must show that exercising personal jurisdiction over the defendant comports with traditional notions of fair play and substantial justice. *Id.*

Due process requires a court to determine whether the nonresident defendant has, through its actions, purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of the forum state's law. The defendant's conduct and connection with the forum state must be such that the defendant should reasonably anticipate being haled into court in the forum state. *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). The minimum contacts analysis requires more than counting the nonresident's contacts with the forum. *Hydrokinetics, Inc. v. Alaska Mechanical, Inc.*, 700 F.2d 1026, 1028 (5th Cir. 1983), *cert. denied*, 466 U.S. 962 (1984).

The two types of jurisdiction which satisfy the *International Shoe* analysis are general and specific jurisdiction. General jurisdiction is invoked when a defendant has pervasive, systematic, and continuous contacts with the forum state, even though the contacts are unrelated to the cause of action. *Bearry v. Beach Aircraft Corp.*, 818 F.2d 370, 379 (1987). Specific jurisdiction is invoked when a defendant's contacts with the forum are more limited, but arise out of or are related to the cause of action. *Id.*

Trinity seeks to invoke both general and specific jurisdiction as to Defendants. Trinity contends that personal jurisdiction exists based on the attorney-client relationship between Defendants and Trinity. In support of its contention, Trinity list [sic] factors for the Court to consider. Those factors are (1) that Myers and the Myers firm represented Trinity for almost a decade, (2) that it was a major client for the firm, (3) that Myers, the firm, and Gilhooly made numerous trips to Texas in connection with their representation of Trinity, (4) that the firm submitted bill statements to Trinity in Dallas, (5) that the firm was paid by check from Trinity in Dallas, (6) that Meyers, the firm, and Gilhooly made and received telephone calls to and from Trinity in Dallas, (7) that Myers, the firm, and Gilhooly sent and received correspondence to and from Trinity in Dallas, and (8) that Myers, the firm, and Gilhooly represented Trinity in an unrelated trial in Fort Worth. Trinity alleges that but for the Defendants' contacts with Texas, they would have never entered into or sustained the attorney-client relationship with Defendants.

At issue in this case is whether Defendants disclosed confidential information to Johnstown which they allegedly acquired while representing Trinity. Therefore, Trinity is suing for alleged acts which would have occurred in Illinois or Pennsylvania. This case is not based upon acts taken by Defendants in Texas. Accordingly, the requisite relationship among Defendants, the state of Texas, and Trinity's complaint is insufficient to warrant the exercise of specific jurisdiction over Defendants.

Defendants' random and sporadic trips to Texas are also insufficient to confer general jurisdiction over Defendants. Defendants' activities lack the continuous and systematic requirement to confer such jurisdiction. Additionally, Defendants' contacts in connection with the state of Texas are not such that they would reasonably anticipate being haled into court in Texas.

It is therefore **ORDERED** that the Motion to Dismiss filed by Defendant Gilhooly on August 25, 1993, is **granted.**

It is **FURTHER ORDERED** that the Alternative Motion to Transfer Venue filed by Defendant Gilhooly on August 25, 1993, is **moot.**

It is **FURTHER ORDERED** that the Motion to Dismiss filed by Defendants Myers & Associates, Ltd. and Richard J. Myers on August 25, 1993, is **granted.**

It is **FURTHER ORDERED** that Plaintiff's complaint is **dismissed without prejudice.**

Signed this 30th day of November 1993.

/s/ Robert B. Maloney
Robert B. Maloney
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TRINITY INDUSTRIES, INC.,

Plaintiff

v. No. 3:93-CV-1587-T

MYERS & ASSOCIATES, LTD.,
RICHARD J. MYERS, and
EDWARD D. GILHOOLY,

Defendants.

FINAL JUDGMENT

(Filed Nov. 30, 1993)

This action came before the Court, Honorable Robert B. Maloney, presiding, and the issues having been duly considered and a decision having been rendered.

It is **ORDERED** and **ADJUDGED** that Plaintiff's complaint is dismissed without prejudice.

Signed this 30th day of November 1993.

/s/ Robert B. Maloney
Robert B. Maloney
U.S. District Judge
